IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 690 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANNABEN V JOSHI

Versus

DIST. EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 690 of 1990

MR YN OZA for Petitioner No. 1

MR NIRZAR S DESAI for Petitioner No. 1

MR AJ DESAI, AGP for Respondent No. 1,3

MR RM DESAI for Respondent No. 2,4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/02/2004

ORAL JUDGEMENT

#. The petitioner challenges the order dated 15th December, 1989 at Annexure:A to the petition, refusing approval to the proceedings of appointment of the

petitioner as Additional Teacher in the Secondary School run by the respondent no. 4.

#. According to the petitioner, she was appointed as Assistant Teacher in Shantivan Vidhyalaya, run by the respondent no. 4 in the subjects of Gujarati and History after being selected pursuant to an advertisement issued on 15.11.87. The District Education Officer had issued N.O.C. in respect of such appointment on 17.7.87 as per Annexure:B to the petition. She was selected out of six candidates who were interviewed by the Selection Committee of the Board. The school management had called the names from Employment Exchange and also from the District Welfare Office. The interview sheet at Annexure:C shows her educational qualifications as B.A., B.Ed. (Gujarati-History). On being so selected, she was appointed from 1.1.88. The names of the members of the Selection Committee are shown at item no. 11 at Annexure:C to the petition in the interview sheet dated 13.12.87. The resolution of the Selection Committee dated 13.12.87 recommending the appointment of the petitioner is also at Annexure:C to the petition. The record shows that in the application for opening Provident Fund Account in form no. 1, the petitioner was shown as a permanent employee appointed from 1.1.88 and her service was shown to be pensionable. At the bottom of this form attached to Annexure:E to the petition, there is signature of the District Education Officer with the Provident Fund Account number mentioned therein.

#. The fact that the petitioner was duly qualified and was selected by the Selection Committee under the resolution dated 13.12.87 for appointment as Assistant Teacher and that she had been serving in that capacity from 1.1.88, has not been disputed. There is no affidavit-in-reply filed controverting any of the averments made in the petition. It is stated in the petition that in case of a similarly situated employee who was also selected in the same selection procedure like the petitioner, N.O.C. was granted and her appointment was regularised, though she had offered Psychology as main subject at graduation level and Gujarati and Hindi as main subjects in B.Ed. These statements made in para-3 are not controverted.

#. The impugned order dated 15.12.89 besides generally stating that the proceeding for appointment of the petitioner was not as per N.O.C., does not give any valid ground for non-approval of her appointment which was made pursuant to the selection by the Selection Board. The petitioner has, in fact, continued in service all

throughout till now and though interim relief was granted while issuing Rule on this petition on 2nd April, 1999, the petition has not been contested by controverting the averments made therein. It would, therefore, appear that the impugned order at Annexure:A dated 15.12.89 refusing approval to the appointment of the petitioner, which was duly made after being selected by the Selection Committee on the basis of her being qualified and having passed the interview is arbitrary and cannot be sustained. The impugned order dated 15.12.89 at Annexure:A is, therefore, set aside. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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